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IN THE
COURT OF APPEALS OF INDIANA

JOSHUA E. SALLEE,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 46A04-0603-CV-117
	)	
GENEVA H. SALLEE,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE LAPORTE CIRCUIT COURT
The Honorable Robert W. Gilmore, Judge
Cause No. 46C01-9902-DR-49

September 11, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Joshua E. Sallee ("Husband") appeals a judgment in favor of Geneva H. Sallee ("Wife"). We affirm.

Issue

Husband and Wife agree as to the issue presented: whether the trial court erred in determining that Wife is entitled to $10,000 from the sale of the former marital residence, located at 12355 S. 700 W., Wanatah, Indiana ("marital residence").

Facts and Procedural History

The evidence favorable to the judgment and all reasonable inferences flowing therefrom reveal the following. Husband and Wife wed on July 1, 1995. Appellant's App. at 70. The marital residence was purchased in 1994 for $68,000, with the parties making a $12,000 down payment. *Id.* at 12, 27-28, 31-32. The parties separated on September 1, 1998. *Id.* at 70. On February 23, 1999, Husband filed a pro se dissolution petition. *Id*. Neither party was represented by counsel during the dissolution proceedings. *Id*. at 1, 12, 66-73. A final hearing on the petition was scheduled for May 17, 1999. *Id*. at 1, 69. However, on that date, the parties filed a motion for summary dissolution decree in which they cited Indiana Code Section 31-1-11.5-8, waived their final hearing, requested that the court grant the dissolution, and submitted a proposed marital settlement agreement ("Settlement Agreement"). *Id*. at 74-81.

On May 17, 1999, the court entered a dissolution decree, which incorporated the Settlement Agreement. *Id.* at 82-84. The relevant portions of the Settlement Agreement provide:

II. DIVISION OF PROPERTY

1. Husband transfers to Wife as her sole and separate property the following:

1. 1995 Pontiac Grand Am.

2. Any personal items, home furnishings, or goods of value to her at: 12355 S. 700 W. Wanatah, IN 46390.

3. If husband decides to sell home at 12355 S. 700 W. Wanatah, IN 46390, and a profit of more than $20,000 is made, $10,000 will be given to wife.

2. Wife transfers to Husband as his sole and separate property the following:

1. Home at 12355 S. 700 W. Wanatah, IN 46390.

2. Any household furnishings or goods of value to him.

III. DIVISION OF DEBTS:

1. Husband shall pay the following debts and will not at any time hold Wife responsible for them, and shall indemnify Wife from any liability on same:

1. House mortgage through GE Capital Mortgage:
Account # 0015375744

2. Wife shall pay the following debts and will not at any time hold Husband responsible for them, and shall indemnify Husband from any liability on same:

1. Car loan through GMAC Account # 154180923215

Id. at 77.

Also in 1999, and not long after entry of the dissolution decree, Husband refinanced the marital residence for $86,000. *Id*. at 13. Thereafter, substantial home improvements were performed on the marital residence, including new insulation, plywood, house wrap, siding, windows, and doors, as well as the construction of a new garage. *Id*. at 19-23, 48-57. On June 25, 2002, Husband executed a quitclaim deed whereby he transferred the marital

residence to himself and Heather Beecher (n/k/a Heather Sallee, Husband's subsequent wife). *Id*. at 18-19, 46. On May 17, 2005, Husband and his subsequent wife sold the marital residence for $145,000. *Id*. at 41. The gross proceeds from the closing paid to Husband and his subsequent wife were $25,812. *Id.* at 19 (Husband's testimony), 41 (settlement statement for closing).

On September 1, 2005, Wife, by then represented by counsel, filed an "Affirmed Petition for Contempt." *Id*. at 87. In her petition, she alleged that Husband "sold the marital residence but has failed and refused to provide a HUD-1 Statement or provide any other information concerning the sale for the purpose of satisfying" provision II(1)(3) of the Settlement Agreement. *Id*. The court set an October 5, 2005 hearing date for Wife's petition. *Id*. at 89. However, when that day arrived, Wife filed an "Alias Citation for Civil Contempt," and the hearing was postponed until November 10, 2005. *Id*. at 89-91. On November 2, 2005, Husband appeared by counsel. *Id.* at 92. Thereafter, Wife moved "to continue cause generally." *Id.* at 94, 95. Husband did not object, and the court granted the motion. *Id.* On December 2, 2005, Wife filed an amended affirmed petition for contempt. *Id*. at 96-100. On February 1, 2006, the parties appeared with counsel for a hearing, during which a magistrate heard evidence and then took the matter under advisement. *Id*. at 5-65.

In a February 8, 2006 order awarding a $10,000 judgment in Wife's favor, the court accepted the magistrate's findings. The relevant portions of the order appear below:

FINDINGS:

> 1. The marriage of the parties was dissolved by Summary Decree filed with the court on May 19, 1999. At this time, neither party was represented by

counsel. The . . . Settlement Agreement was drafted either by [Husband] or someone on his behalf.

2. Paragraph II 1. 3. states as follows: "If husband decides to sell home at 12355 South 700 West, Wanatah, Indiana 46390, and a profit of more than Twenty-Thousand ($20,000) Dollars is made, Ten-Thousand ($10,000) Dollars will be given to wife."

3. At the time the parties[']marriage was dissolved, there was a Fifty-Three Thousand ($53,000) Dollar mortgage balance on the home and the wife believed that it would sell for approximately Eighty-Thousand ($80,000) Dollars. In part, this is based upon a Sixty-Eight Thousand ($68,000) Dollar purchase price in 1994.

4. However, the husband elected to remain living in the home and subsequent to the dissolution of the parties[']marriage, he refinanced the same for approximately Eighty-Six [Thousand] ($86,000) Dollars which he used in substantial part for improvements thereto.

5. Finally, the marital home was sold by the husband and his subsequent wife on May 17, 2005. After paying off the first mortgage of Eighty-Six Thousand Seven Hundred Ninety Seven ($86,797.00) Dollars and the second mortgage of Twenty-Two Thousand Three Hundred Forty Nine ($22,349.00) Dollars, there was net cash proceeds of Twenty-Five Thousand Eight Hundred Twelve ($25,812.00) Dollars.

6. The Court does not believe that the husband should be reimbursed for all the subsequent refinancing of the marital home and the improvements made to it in so far as this constitutes eating up the equity which originally existed at the time of the parties[']dissolution.

7. The wife is entitled to the sum of Ten-Thousand ($10,000) Dollars from the sale of the former marital residence.

Id. at 3-4.

Discussion and Decision

Husband contends that the Settlement Agreement's terms are clear, unambiguous and conclusive and that there was "no evidence that a profit of more than $20,000 was made upon the sale of the marital residence." Appellant's Br. at 7. To the contrary, he maintains that he actually lost money on the $145,000 transaction. In particular, he asserts that two mortgages (a first mortgage of $86,797 and second mortgage of $22,349) were paid; the cost of the materials utilized in renovations "probably" totaled $50,000; he did not factor in any amount

to compensate him for his labor; he incurred mortgage interest of $39,052.18; and he paid more than $5,000 in real estate taxes and insurance for the marital residence. Appellant's App. at 15, 25-26, 41, 62-65. He claims that the trial court's decision fails to effectuate the intent of the parties.

Husband is appealing a decision in which the trial court entered findings and conclusions *sua sponte*. We have set out the appropriate standard of review as follows:

> When reviewing specific findings of fact and conclusions thereon under Indiana Trial Rule 52(A), this court may not affirm the judgment on any legal basis. Rather, we must determine whether the trial court's findings are sufficient to support the judgment. In reviewing the judgment, we must first determine whether the evidence supports the findings and, second, whether the findings support the judgment. The judgment will be reversed only when clearly erroneous or contrary to law. To determine whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. We will not reweigh the evidence or assess witness credibility.
>
> However, when the trial court enters findings and conclusions *sua sponte*, the specific findings only control as to the issues they cover, while a general judgment standard applies to any issue upon which the court has not found. We may affirm a general judgment on any theory supported by the evidence adduced at trial.

Bryant v. Bryant, 693 N.E.2d 976, 977 (Ind. Ct. App. 1998) (citations omitted), *trans. denied*.

When presented with settlement agreements, we keep in mind the following:

> In the dissolution of marriage context, parties are free to craft settlement agreements. Such agreements are contractual in nature and binding on the parties. The rules of contract construction therefore govern construction of settlement agreements. Interpretation of the language in a contract is a question of law, which we review de novo.
>
> Unambiguous terms must be given their plain and ordinary meaning. If the contract is clear and unambiguous, we may not construe the contract or look at extrinsic evidence; rather, we must simply apply the contractual provisions. Terms are not ambiguous merely because the parties disagree about the proper interpretation of the terms. Rather, language is ambiguous

> only if reasonable people could come to different conclusions about its meaning.

Singh v. Singh, 844 N.E.2d 516, 524 (Ind. Ct. App. 2006) (citations and footnote omitted). "If the terms of the contract are unclear, ambiguous, or capable of more than one interpretation, we will construe them to determine and give effect to the intent of the parties at the time they entered into the contract." *In re Kemper Ins. Cos.*, 819 N.E.2d 485, 490 (Ind. Ct. App. 2004), *trans. denied*. "[W]e construe any contract ambiguity against the party who drafted it." *Time Warner Entertainment Co. v. Whiteman*, 802 N.E.2d 886, 894 (Ind. 2004).

Again, the provision at issue states: "If husband decides to sell home at 12355 S. 700 W. Wanatah, IN 46390, and a profit of more than $20,000 is made, $10,000 will be given to wife." Appellant's App. at 77 (Paragraph II 1. 3.). The Settlement Agreement does not define the term "profit." There are many different types of profit, including but not limited to accumulated profit, gross profit, net profit, operating profit, and paper profit. *See* Black's Law Dictionary 1246-47 (8th ed. 2004). Not surprisingly, each type of profit has a different definition. *See id*. One dictionary defines "profit" generally as an "advantageous gain or return; benefit." American Heritage College Dictionary 989 (2d ed. 1991). Another source provides the following definitions for "profit":

> 1. a valuable return: gain
> 2. the excess of returns over expenditure in a transaction or series of transactions; especially the excess of the selling price of goods over their cost
> 3. net income *usually for a given period of time*
> 4. the ratio of profit *for a given year* to the amount of capital invested or to the value of sales
> 5. the compensation accruing to entrepreneurs for the assumption of risk in business enterprise as distinguished from wages or rent.

See Merriam-Webster On-Line Dictionary, profit, http://www.m-w.com/dictionary/profit (last visited Aug. 23, 2006) (emphases added).

As should be evident from the numerous possible definitions for the word "profit," reasonable people could come to different conclusions about the term's meaning in the Settlement Agreement. That is, the meaning of "profit" is unclear. Consequently, we will construe the term in context to determine and give effect to the intent of the parties at the time they entered into the contract. Furthermore, we will read any ambiguity within the Settlement Agreement against the Husband, as he indicated that he was the drafter of the document.[1] Appellant's App. at 12, 26-27, 30-31.

Recalling that we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom,[2] we examine Wife's explanation as to why she agreed to Paragraph II 1. 3. (the $10,000 payoff provision) of the Settlement Agreement:

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[1] Wife "was under the assumption that [subsequent] wife prepared" the Settlement Agreement for Husband. Appellant's App. at 30.

[2] Husband wishes to hang his hat on his testimony regarding his interpretation of "profit" in Paragraph II 1. 3. Specifically,

> A. Well if I made a profit of 20,000, you know, after any loans I had or debts from the improvements of the house.
> Q. Did you also understand the profit to include all the expenses you incurred in owning the home?
> A. Yes.
> Q. And those would include insurance, taxes?
> A. Yes.
> Q. Home improvements?
> A. Yes.
> Q. Interest? Right?
> A. Yes.

Id. at 27. Husband opined that he had not "made any profit" and that "based on having paid all these expenses, [he] probably lost money." *Id*. at 29. The trial court heard this testimony and weighed it against

> I honestly thought that [Husband] would sell the property much sooner. The fact that he does construction work, is laid off through the winter, he would not have been able to afford the mortgage. So I thought that he would sell the house much sooner.
>
> *We discussed what we thought* the profit on the house would be *at that time*. *We thought* that he would profit, based on what the mortgage was and how much he sold it for would be over $20,000. If that was the case, I asked for 10,000.

Id. at 31 (emphasis added). When asked what Paragraph II 1. 3. meant to her, Wife replied: "That is he – I was thinking we owed like $53,000 on the house when I left. I thought that [Husband] would be able to sell it for at least 80,000. And I thought that 53 to 80,000 would have been the profit." *Id*. at 32. Stated otherwise, the parties talked about selling the marital residence around the time of dissolution (1999), estimated that at that time it would sell for $80,000 or more, subtracted out the amount they then owed on the mortgage, and agreed that Wife should receive $10,000 of the equity that existed when the marriage dissolved. Thus, we construe "profit" here to mean "equity in the marital residence at the time of dissolution," as we believe this construction effectuates the parties' intent when they agreed to the provisions in the Settlement Agreement. Our interpretation is supported not only by Wife's testimony, but also by the following evidence. The original purchase price for the marital residence was $68,000 in 1994. Taking out the $12,000 down payment, and considering that the marital residence was refinanced five years later for $86,000, one can reasonably deduce that approximately $30,000 in equity existed upon refinance in 1999. *Id*. at 12, 13, 27-28, 31-32. Given that the refinancing occurred shortly after but in the same year as the dissolution, Husband and Wife had at least $20,000 in equity in the marital residence at the

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Wife's testimony and against the other evidence presented. We reiterate our prohibition on reweighing

time of dissolution. Accordingly, a "profit of more than $20,000 was made." *Id*. at 77. This "profit" coupled with Husband's eventual decision to sell the marital residence triggered the Husband's duty, pursuant to Paragraph II 1. 3., to give Wife $10,000. The trial court's order merely required Husband to adhere to the Settlement Agreement that he drafted. Husband's subsequent refinancing, improvements, etc., were irrelevant to the parties' original intent when they agreed to Paragraph II 1. 3., which was to share in the equity that existed in the marital residence at the time of dissolution.

Affirmed.

BAKER, J., and VAIDIK, concur.

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evidence and/or assessing witness credibility. *Bryant*, 693 N.E.2d at 977.